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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5900 OF 2004

S.B. Constructions ... Petitioners

Vs.

Ramdular Dharmadutta Mishra & Anr. ... Respondents

Mr. Yadunath Chaudhari for the petitioners.

Mr. Dilip Bodke for the respondents.

CORAM: ABHAY S. OKA, J.

DATED: 8TH DECEMBER, 2004.

P.C.:-

1. Heard the learned counsel appearing for the parties.

2. By order dated 20/7/2004, this court issued notice for final disposal.

3. The petitioners are the original defendants in the suit filed by the respondents. The suit was filed in the year 2001. The written statement could not be filed in time. Therefore, an application was made on 27/11/2003 praying that the written statement be taken on record. The said application came to be rejected by order dated 1/12/2003. An application for review of the said order was made by the petitioner, which also came to be rejected by order dated 25/6/2004.

4. A perusal of the orders passed by the court below shows that reliance was placed on the provisions of Rule 1 of Order VIII of the Code of Civil Procedure, 1908 (as amended w.e.f. 1/7/2002), wherein it was held that after completion of stipulated period of 90 days, the written statement cannot be filed.

5. In my view, the approach of the trial court was erroneous. Firstly, since the suit being filed prior to 1/7/2002, the amended provision which came into effect on 1/7/2002 is not applicable. Secondly, now the Division Bench of this court has interpreted the amended provision and it is held that the provision is directory as distinguished from mandatory.

6. Mr. Bodke, the learned counsel appearing for the respondents made a grievance that the reasons which are assigned in the application dated 27/11/2003 are incorrect and, in fact, there is no ground to allow the petitioners to file written statement.

7. Mr. Choudhari, the learned counsel appearing for the petitioner stated that the written statement is tendered along with the application dated 27/11/2003. In the circumstances, interest of justice requires that the written statement should be ordered to be taken on record. Prejudice, if any, caused to the respondents can be compensated by ordering payment of costs. Hence, I pass the following order:

O R D E R

(i) The impugned orders dated 1/12/2003 and 25/6/2004 are quashed and set aside.

(ii) The written statement of the petitioners filed along with the application dated 27/11/2003 shall be taken on record subject to condition of the petitioners paying the costs of Rs.5,000/- to the respondents within a period of four weeks from today. If the amount of costs is not accepted by the respondents, liberty to the petitioner to deposit the said amount in the trial court.

(iii) Rule is made absolute in the above terms.

(iv) All concerned to act on ordinary copy of this order duly authenticated by the Sheristedar of this court.

(ABHAY S. OKA, J.)